PROPERTY ASSESSMENT APPEAL BOARD FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2015-007-00042C Parcel No. 8813-02-426-070

Waterloo Owner, LLC,
Appellant,

VS.

Black Hawk County Board of Review, Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on June 29, 2016. Attorneys Deb Tharnish and Sarah Franklin, Davis Brown Law Firm, Des Moines, represented Waterloo Owner, LLC. Black Hawk County Attorney David Mason represented the Board of Review.

Waterloo Owner, LLC (the Mall) is the owner of a commercial, regional mall located at 2060 Crossroads Boulevard, Waterloo. The two-story mall was built in 1969 and has 603,775 square-feet of gross building area (GBA). The parties have stipulated that it has 462,000 square feet of gross leasable area (GLA). The mall has forty in-line stores, ten temporary tenant spaces, and five anchors: JC Penney, Gordmans, Dillards, Sears, and Younkers. Sears, Gordmans, and Dillards are included as anchors in the mall, but they are not part of the tax parcel on appeal. The property is also improved with paving and yard lighting. The site is 31.735 acres.

In October 2015, PAAB issued an order adjusting the subject property's 2013 assessment; well after the January 1, 2015, assessment had been set by the Black Hawk County Assessor. In that case, PAAB reversed the Board of Review's decision and modified the Mall's 2013 total assessment from \$26,619,880 to \$18,902,500; finding by a preponderance of the evidence that the subject property was over

assessed. PAAB determined the property's value could not be readily established by the sales comparison approach alone and focused on the appraisers' income analyses.

In the meantime, the Black Hawk County Assessor set the property's January 1, 2015, assessment at \$26,838,140; allocated as \$7,147,000 in land value and \$19,691,140 in improvement value. The Mall then protested to the Board of Review, claiming the property was assessed for more than the value authorized by law under lowa Code section 441.37(1)(a)(1)(b). The Board of Review denied the petition. The Mall then appealed to PAAB.

Findings of Fact and Conclusions of Law

I. Jurisdiction and Scope of Review

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); see also Hy-Vee, Inc. v. Employment Appeal Bd., 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

II. Law Applicable to Over Assessment Claim

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Recognizing that this is the second time the value of the subject property has come before this Board, the Iowa Supreme Court has stated "previous decrees have no preclusive effect on subsequent tax assessments. *Cott v. Board of Review of Ames*,

442 N.W.2d 78, 81 (lowa 1989). However, the Court also noted that "[i]n cases involving valuation, it has been held that in the absence of a showing of change in value, it is presumed that a valuation fixed by the court continues to be the true value of the property in subsequent years." *Id.* (citations omitted). Thus, while PAAB's previous adjudication of the property's value does not preclude re-litigation of the same issue, it stands to reason that a significant departure from our prior ruling should be justified by the facts.

III. Burden of Proof

a. Applicable Law

Initially, the burden of proof in an assessment protest rests with the taxpayer, who "must establish a ground for protest by a preponderance of the evidence." *Compiano v. Polk Cnty. Bd. of Review*, 771 N.W.2d 392, 396 (Iowa 2009). However, if the taxpayer "offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden shifts to the board of review to uphold the assessed value." *Id.* at 396-397; § 441.21(3). Failure to shift the burden of proof is not equivalent to satisfying the burden of proof. *Id.* at 397. "Ultimately, the burden of proof is one of persuasion," which "comes into play after all the evidence is introduced at hearing." *Id.* at 397 n. 3.

b. Findings of Fact

The Mall asserts the subject property is over assessed, that it has shifted the burden with two competent appraisals, and that the Board of Review has failed to support the assessment. The Board of Review, to the contrary, submitted its own appraisal and believes it has upheld its burden and the assessment should be set at the conclusions set forth in its appraisal. All three appraisals in the record reach a conclusion of value for the Mall that is less than the current assessment. The appraisals were also completed using the methods recognized under lowa Code section 441.21(1)(b).

c. Analysis and Conclusion

We conclude the Mall has shifted the burden of proof. The Mall has shown the subject property is over assessed. Therefore, PAAB must now determine what the correct valuation should be based upon a preponderance of the evidence.

IV. Sales Comparison Approach

a. Applicable Law

In lowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.*

The sales comparison method is the preferred method for valuing property. *Compiano*, 771 N.W.2d 392 at 398; *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 779 (Iowa 2009); *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W. 2d 594, 597 (Iowa 1990). "[A]Iternative methods to the comparable sales approach to valuation of property cannot be used when adequate evidence of comparable sales is available to readily establish market value by that method." *Compiano*, 771 N.W.2d at 398. (emphasis added). However, where the market value of the property cannot be *readily* established using comparable sales, one can turn to other factors to determine the value. § 441.21(1)(b) (emphasis added); *Soifer*, 759 N.W.2d at 779. "Thus, a witness must first establish that evidence of comparable sales was not available to establish market value under the comparable sales approach before the other approaches to valuation become competent evidence in a tax assessment proceeding" *Id.* (citing *Soifer* 759 N.W.2d at 782); *Carlon Co. v. Bd. of Review of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997).

The first step in this process is determining if comparable sales exist. *Soifer*, 759 N.W. 2d at 783. If PAAB is not persuaded as to the comparability of the properties, then it "cannot consider the sales prices of those" properties. *Id.* at 782 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86,88 (lowa 1977)). Whether other property is sufficiently similar and its sale sufficiently normal to be considered on

the question of value is left to the sound discretion of the trial court. *Id.* at 783 (citing *Bartlett & Co. Grain*, 253, N.W.2d at 94).

b. Findings of Fact

Kroeger & Ault Testimony

The Mall called Mary Kroeger, the Marketing and Specialty Leasing Manager, and Sue Ault of Ault Realty and Advisors, who is the managing partner of the Mall, to testify regarding the Mall's purchase, its general health, and its market.

Based on Kroger and Ault's collective testimony, we find that Crossroads is a two-level regional mall located at the intersection of I-80 and San Marnan Drive. It appears that prior to the Mall's purchase of the property, the income and expenses indicated the mall had minimal fluctuation of the income year-over-year and the demographics of the area were stable. The record indicates the subject property was stable in 2013. However, income has declined since the Mall purchased the property with Scheels and Old Navy closing their stores at this location. Subsequently there has been some decrease in sales and traffic but some new tenants have been secured for these spaces and there has been an increase in the marketing budget in an attempt to generate more traffic. In addition, leases with temporary tenants have been renegotiated and leases with traditional tenants may have been or will be renegotiated as well. Temporary tenants commonly pay significantly less than a national tenant and rarely convert to a traditional tenant.

The Mall had some updates in 2013-14 including acquisition of some new kiosk carts, resurfacing of the upper level parking area, and some refurbishing of the exterior Mall signs. Additionally, the Mall has budgeted for parking resurfacing/repairs and roof repairs over the next few years.

Appraisals

Three appraisals were submitted into evidence, and all of the appraisers testified at the hearing. The Mall's appraisals were completed by Ted Frandson of Frandson & Associates, LC, Des Moines, (Ex. 4); and Dane Anderson, Robyn Marshall, and Travis

Mleynek of RERC, West Des Moines, (Ex. 5). Russ Manternach of Commercial Appraisers of Iowa, Inc., West Des Moines, completed the Board of Review's appraisal. (Ex. A). The following table summarizes the appraisers' approaches to value and their respective conclusions.

		Income Approach		
		(Direct	Cost	Final Opinion
Appraiser	Sales Approach	Capitalization)	Approach	of Value
Frandson	\$12,490,000	\$13,930,000	N/A	\$12,700,000
RERC/Marshall	\$12,900,000	\$13,300,000	N/A	\$13,000,000
Manternach	\$20,580,000	\$18,910,000	\$21,030,000	\$19,200,000

All three appraisers are qualified to appraise the subject property. They all concluded the subject property is a Class C mall located in a tertiary market, which is considered a marginal market for institutional investors. They also all indicated the mall was stable to slightly improving. The appraisers concluded the property's highest and best use, as improved, is for its continued use as a regional mall. However, all three appraisers indicated the market trend is presently moving away from enclosed malls; replaced instead with power, or lifestyle centers, and online shopping.

Additionally, all three appraisers determined the property's occupancy rate was approximately 78%. However, Frandson and RERC believed 73% occupancy (or less) more accurately reflected actual occupancy levels because the temporary tenant count should be removed. These occupancy estimates did not include the anchor tenants located on separate parcels. Conversely, Manternach testified the subject property had a 17% vacancy rate (83% occupancy) for the last two years. Manternach's occupancy rate was for the subject parcel only and did not include the other three anchor properties that are located on different assessment parcels. He noted the occupancy rate would be over 90% if they were included. He asserts this is important because any tenant coming into the subject mall would consider all of the anchors in determining the overall health of the mall.

All three appraisers completed the sales comparison approach to value because it is the preferred method under lowa law. However, no appraiser relied exclusively on this approach to value the property.

1. Frandson Appraisal

Frandson submitted four sales of malls he considered similar to the subject and located in similar market areas. He developed his sales and income approaches in an "as is" and "as stabilized" condition. Frandson's "stabilized" value considers a recent significant increase in vacancy and declining sales. He believes the market would expect some recovery of occupancy in the future, and consequently adjusted the sales to the conditions of the stabilized prospective occupancy and also the current condition of increased vacancy. Essentially, this values the subject property as stabilized, assuming stabilized occupancy and market rents. (Ex. 4, p. 44). Frandson's "as is" value considers and adjusts for the increased vacancy and anticipated decline of the mall that was known as of January 1, 2015. (Ex. 4, p. 47). Because our focus is on the "as is" value of the subject property, as of the January 1, 2015, assessment, we will analyze these conclusions in Frandson's sales approach. The following table is a summary of his sales analysis to conclude an "as is" value for the subject property.

Mall	Location	Sale Date	Sale Price	SP/SF	Adjusted SP/SF
Subject	Waterloo, Iowa	N/A	N/A	N/A	N/A
1 - Kandi Mall	Wilmar, MN	Nov-15	\$14,180,000	\$31.35	\$27.37
2 - Santa Fe Place	Santa Fe, NM	Nov-14	\$21,600,000	\$52.39	\$29.47
3 - Memorial Mall	Sheboygan, WI	Mar-15	\$10,725,000	\$29.21	\$26.29
4 - Capital Mall	Jefferson City, MO	Dec-12	\$11,000,000	\$33.36	\$23.12

Frandson reports "the [subject] mall was approximately 78% occupied;" however, this includes only the subject parcel and not the anchor tenants located on other parcels. (Ex. 4, cover letter). Additionally, Frandson believes the vacancy/occupancy rate should be closer to 30/70 because it was known that JC Penney was leaving.

Comparables 1, 3 and 4 had between 74% to 82% occupancy and were adjusted downward 10%; whereas, Comparable 2 had 97.5% occupancy and was adjusted downward 25%. Frandson testified he did not include the vacancy/occupancy rates he relies upon for the subject property in his adjustment grid. Additionally, he was unable to testify regarding what occupancy rate he used, other than stating it could have been somewhere between a 20% to 50% vacancy rate.

Comparable 1 is located in Wilmar, Minnesota. It was built in 1973 and was 74% occupied at time of sale. (Ex. 4, p. 50). Frandson describes this mall as being similar in size, with Herbergers and JC Penney as its anchors. Although the sale occurred after the assessment date, he testified it was on the market at this time and there was no indication that market conditions changed. Wilmar is a smaller community, but it is the only regional mall in the area. The Board of Review was critical of this sale because Frandson reported it as an under-preforming mall, but testified the subject mall was stable to improving. Moreover, the sale sheet indicates the buyer is an investment company whose objective is to acquire well-located, small-town shopping centers, and improve them to dramatically increase cash flows and sell them for a gain. (Ex. 4, p. 51). The RERC appraisal also used this sale but considered it inferior to the subject and adjusted it upward by 25%.

Comparable 2, located in Santa Fe, New Mexico, was built in 1985 and renovated in 2005. It was 97.5% leased at time of sale. (Ex. 4, p. 56). Frandson asserts this sale is in a better location with a better occupancy, but is comparable in size to the subject. Like Sale 1, the sales sheet for this property also indicates the buyer is a company that specializes in stabilizing and repositioning real estate assets. (Ex. 4 p. 57).

Comparable 3 is located in a remote suburb in Sheboygan, Wisconsin, and was built in 1983. The property was foreclosed on in 2012. (Ex. 4. P. 62). It has struggled for years with in-line space vacancy. (Ex. 4, p. 62). Its occupancy was 79% at time of sale. We note the 2015 purchase by Meijer included an adjoining Sears store. Meijer plans to tear down the former Sears building and a portion of the mall itself in order to make way for a new Meijer store. (Ex. 4, p. 63). Additional notes in the appraisal

indicate most Meijer stores are approximately 192,000 square feet, which is equivalent to 52% of the property purchased in this transaction. (Ex. 4, p. 62). Despite this, Frandson apparently considers this sale very similar to the subject property.

The last sale, Comparable 4, is located in Jefferson City, Missouri. Built in 1978 and remodeled in 1992, it was 82% occupied at the time of the sale. There were three land leases in place when it sold and for which Frandson adjusted. Originally, Frandson had included a higher GLA for this property, however, subsequent verification revealed this property had much less GLA than originally considered. Correcting this error brought the adjusted value of this property more in line with the other sales.

Manternach also relied on this sale and made a positive 20% location adjustment because it is located in Jefferson City, a smaller community with a population of 43,000; whereas Waterloo alone has a population of 68,366. Because there is a substantial difference between the sizes of the communities, we find Frandson's lack of an adjustment for this factor questionable.

Frandson's adjusted range of value for the "as is" value of the subject property on January 1, 2015, was between \$23.12 per-square-foot and \$29.47 per-square-foot. He concludes an opinion of \$27.00 per-square-foot, or \$12,490,000 rounded.

2. RERC/Marshall Appraisal

RERC selected seven sales of malls it considered similar to the subject and located in similar market areas. (Ex. 5, p. 55). The following table is a summary of the RERC sales analysis.

Mall	Location	Sale Date	Sale Price	SP/SF	Adjusted SP/SF
Iviali	Location	Date	Sale Fille	37/37	35/35
Subject	Waterloo, Iowa	N/A	N/A	N/A	N/A
1 - Kandi Mall	Wilmar, MN	Nov-15	\$14,180,000	\$31.35	\$42.29
2 - Central Mall	Salina, KS	May-15	\$14,000,000	\$39.44	\$43.02
3 - PREIT Penn Portfolio	State College, PA	Sep-14	\$32,300,000	\$36.28	\$37.01
4 - Courtland Center Mall	Burton, MI	Jul-14	\$6,000,000	\$13.09	\$21.47
5 - Chambersburg Mall	Chambersburg, PA	Nov-13	\$8,800,000	\$19.37	\$24.40
6 - Lakeview Square Mall	Battle Creek, MI	Mar-13	\$9,250,000	\$34.70	\$38.51
7 – Bay City Mall	Bay City, MI	Mar-13	\$7,562,549	\$20.00	\$20.20

Comparable 1 is the same as Frandson's Sale 1, but we note RERC's adjusted sale price for this property was roughly \$15 per-square-foot higher. Marshall testified this property's market has a similar household income compared to the subject property, but she still considers this sale inferior in location compared to the subject and adjusted it upward by 25%. In contrast, we note Frandson considered the location similar to the subject and made no adjustment for this factor. However, RERC's analysis indicates the subject's market has superior population statistics, purchasing power, and other factors that make it superior to Sale 1. As such, we find RERC's location adjustment proper and question Frandson's lack of an adjustment.

The Board of Review pointed out the RERC appraisal indicates this sale as having 60% occupancy, whereas Frandson reported this sale as having 74% occupancy. Marshall asserts RERC verified this information with CoStar and the Assessor; Frandson indicates the same sources for his verification, along with the Grantee. Because both appraisers contend they verified this information with the same sources, we question its reliability in their analyses. Additionally, as previously noted, Frandson's report of this sale indicated the buyer specializes in improving properties.

Marshall stated Comparable 2 has similar anchors to the subject property, which would result in similar drawing power as the subject property.

Comparable 3 is located in State College, Pennsylvania and the sale included two malls. Marshall does not believe this multi-parcel transaction compromises the reliability of this sale. We disagree. Typically, when multi-parcel transactions occur it results in a lower price per unit.

JC Penney and Old Navy anchor Comparable 4, which was 67% occupied at the time of sale.

Comparable 5 is located in a smaller market in Pennsylvania. Marshall asserts it has similar characteristics as that of the subject property.

Comparables 6 and 7 are older malls in tertiary markets and bank-owned properties when they sold. Neither sale was adjusted for this condition. Marshall explained these sales were given the least consideration in RERC's conclusions.

RERC applied across the board upward age/condition adjustments to all the properties. The indicated adjusted range of value is \$20.20 to \$43.02, with an average of \$32.41. (Ex. 5, p. 59). In the sales comparison conclusion, Marshall noted they gave Sale 3 (the multi-parcel sale) the most weight as it required the least overall net adjustment. The remaining sales were considered equally. RERC reconciled to \$35 per-square-foot of GLA, or \$16,285,710.

In our review of the adjustments, we found the net adjustments were incorrectly calculated. As a result, five of the seven adjusted values are artificially low. After correcting for the mathematical errors, the indicated value range is \$20.20 to \$44.70 per-square-foot and an average of \$33.20. We do not know if the corrections would affect RERC's conclusion by the sales comparison approach.

However, RERC's sales comparison approach does not end there. Marshall testified the verification process of each sale indicated that none of the sales were recently updated nor was any immediate updating planned. Marshall further stated the Mall provided RERC with a list of capital expenditures it planned to incur between 2015 and 2018, totaling \$3,348,410. (Ex. 5, p. 30). Because of these planned improvements, RERC considered the subject property to be in better condition than the comparables. Despite the fact that none of the planned capital improvements have occurred to date, RERC reduced the sales comparison approach by the amount of the capital expenditures to arrive at its sales comparison approach conclusion of \$12,900,000 (rounded).

3. Manternach Appraisal

Manternach located seven sales in Iowa, Nebraska, Missouri, and North Dakota. (Ex. A, p. 56). Several of the sales were either distressed sales or sales of dead malls. Manternach determined only two were credible for analysis. (Ex. A, p. 58). He compared these two sales to the subject property and adjusted them for differences. The following table is a summary of his analysis.

Mall	Location	Sale Date	Sale Price	SP/SF	Adjusted SP/SF
Subject	Waterloo, Iowa	N/A	N/A	N/A	N/A
1 - Kirkwood Mall	Bismarck, ND	Mar-11	\$58,093,845	\$82.26	\$68.43
2 - Capital Mall	Jefferson City, MO	Dec-12	\$11,000,000	\$25.62	\$35.85

Comparable 1 had a much higher net operating income compared to the subject property, therefore Manternach adjusted it downward 30% for the property rights conveyed. It was located in a smaller market, the property was larger, and it had a higher percentage of anchor tenants. The Mall was critical of this sale, asserting it had significantly higher in-line sales than the subject property. Manternach testified he believes this is considered in the net operating income (NOI) of the property, which he recognized was superior to the subject and had adjusted for it.

Comparable 2 is the same as Frandson's Sale 4. Manternach testified that when verifying this sale with the broker, he was told the property had deferred maintenance regarding the roof and some other items. Manternach adjusted this sale to \$35.85 per square foot, whereas Frandson arrived at a value of \$23.12. As previously noted, Frandson did not apply any location adjustments to this sale despite it being located in a smaller community.

Manternach explained deferred maintenance is an item that is in need of immediate replacement. He did not identify any deferred maintenance on the subject property. He considers yearly repairs such as regular roof maintenance, which may include some patching, or maintenance of the parking lot, to be typical on-going maintenance of a property. He recognizes those types of on-going expenses as part of reserves for replacement and repair/maintenance expenses. He testified the Mall did not make him aware of or identify any capital expenditures like those considered in the RERC appraisal. Moreover, he asked the Mall if there were any major items repaired prior to the 2015 assessment date, or planned immediately after the assessment date and was informed there were none.

From these two sales, Manternach reconciled an opinion of \$45 per-square-foot of leasable area, or \$20,580,000 rounded.

c. Analysis

All three appraisals included the sales comparison approach and their conclusions are set forth in the table below.

Appraiser	Sales Approach	
Frandson	\$12,490,000	
RERC/Marshall	\$12,900,000	
Manternach	\$20,580,000	

Frandson relied on four comparable sales and adjusted them for differences between them and the subject property. However, Frandson was unable to articulate what occupancy rate he was using for the subject property and it was not reported on his sales comparison grid. He testified it could have been somewhere between a 20% to 50% vacancy rate. Without knowing what occupancy Frandson was using in his sales comparison analysis, we are unable to determine the reliability of his adjustments for this factor and believe it influences the value conclusions.

Additionally, Frandson excluded the occupied, separately-parceled anchor tenants from his consideration in the occupancy rate. Although Frandson asserts the market is going to primarily look at the occupancy of the in-line space, and not necessarily the anchors, we question this logic. The more compelling testimony of other witnesses indicates that having strong anchors in place is paramount to the health and success of a mall. We agree. By overstating the vacancy of the mall as a whole, the property value is likely to be artificially lowered.

Moreover, as it relates to Sale 1, we find the evidence indicates a location adjustment should have been made. We are also concerned about relying on Sale 3, as the buyer undertook a significant post-sale demolition and reconstruction project. Applying a 20% adjustment to Sale 1 and considering Sales 2 and 4 indicates a range of value from \$23.12 to \$33.01 per-square-foot. For the reasons described in the preceding paragraphs, however, we find this value range may be artificially low. Therefore, we decline to rely on Frandson's sales comparison analysis.

The RERC appraisal included seven comparable sales. First, Sales 6 and 7 were bank-owned properties at the time of sale and were not adjusted for this condition.

We find they are therefore unreliable indicators of value when it appears there were other arm's-length transactions available for comparison. See § 441.21(1)(b)(1).

Comparable 3 was the transfer of two malls in one transaction. Marshall testified that while no adjustments were made, it was considered in the reconciliation of the adjusted values. However, this sale was given the most weight in reconciling a value per-square-foot for the subject property.

We also question the comparability of Sale 4, which required a 58% overall net adjustment after correcting for the calculation error.

Furthermore, we question RERC's valuation of the subject in a hypothetical future condition. RERC valued the property as if the roof and parking lot had been repaired; despite the fact the other appraisers did not indicate any such repairs were necessary or planned. As such, we question the reliability of Year Built/Condition adjustments made. Removing those adjustments and correcting for the erroneously calculated net adjustments, shows a range of value from \$18.06 to \$39.84. We decline to rely on Sales 3, 4, 6 and 7 for the aforementioned reasons. Of the remaining Sales 1, 2, and 5, the corrected adjustments have a range of value between \$23.83 and \$39.84. From this range, we are inclined to give the most weight to Sale 2, as it required the least amount of adjustments, and indicates a value of \$37.84 per-square-foot; or \$17,482,000 rounded for 462,000 square-feet of GLA.

Lastly, having removed the Year Built/Condition adjustment, we find no reason to also deduct more than \$3,000,000 from the conclusion to account for updates to the subject property that were purported to occur between 2015 and 2018.

Manternach also developed the sales comparison approach, but gave it limited consideration. He asserts there are few normal transactions of malls to analyze. He initially considered seven sales in the Midwest; but several were distressed or the properties were significantly superior to the subject. For these reasons, he did not consider them reliable or reasonable comparable properties to the subject. Ultimately, he submitted two sales he adjusted for differences compared to the subject property. The sales were disparate in their pre-adjusted and adjusted sales prices-per-square-foot. The adjusted sales indicate the subject's value is somewhere between \$35.85 and

\$68.43 per-square-foot. Manternach acknowledged this disparity and admitted it weakened the approach. As a result, he gave it less consideration in his reconciliation. Given the disparity of Manternach's sales and his reluctance to rely on them, we give his sales comparison analysis no consideration.

Based on the foregoing, we find the best evidence in the record of the subject's fair market value by the sales comparison approach is \$17,482,000.

V. The Cost Approach

a. Findings of Fact

Frandson and RERC

Neither Frandson nor RERC developed the cost approach. Frandson did not believe it was possible to develop an opinion of site value for the subject because of the size of the site and lack of land sales. Moreover, in his opinion, the property suffers from significant physical depreciation; functional obsolescence because of the two-story design of the anchors; and economic obsolescence from being located in a tertiary market.

Marshall testified RERC did not develop this approach because market participants would not consider cost; and the subject is an older mall that has had remodeling. Moreover, she asserts it is difficult to determine the functional and/or external obsolescence for this property type in the market.

Manternach

Manternach developed the cost approach. He did not give it much weight in his conclusions, but he believes it is a good check on the other approaches. He relied on commercial land sales for his opinion of site value. (Ex. A, p. 46). He adjusted the land sales for differences to arrive at an opinion of site value of \$5,880,000. (Ex. A, p 49).

Manternach estimated the replacement cost new of the building improvements using the replacement cost manual Marshall Valuation Service. The replacement cost new of the improvement value is \$61,357,089. (Ex. A, p. 55). He deducted physical depreciation, as well as functional and external obsolescence, for a total

accrued depreciation of \$47,275,637; resulting in a depreciated cost of improvements of \$14,081,452. Lastly, Manternach added in the depreciated value of the site improvements and land value to arrive at an opinion of value by the cost approach of \$21,030,000 rounded. (Ex. A, p.55).

Manternach acknowledged that the applied depreciation of nearly 77%, reduces the reliability of this approach, but he believes it is applicable and supports the conclusions he arrived at in his other approaches to value. Ultimately, he gave limited weight to this approach in his conclusions.

b. Analysis

Manternach was the sole appraiser to develop the cost approach. He concluded an opinion of \$21,030,000. Frandson and Marshall assert it was not relevant and/or declined to develop the approach because they believe the level of depreciation and obsolescence applicable to the subject property renders the approach unreliable. Given the physical depreciation and obsolescence of the Mall, as well as the testimony that malls like the subject are no longer being built, we do not find the cost approach reliable in this case and give it no consideration.

VI. The Income Approach

a. Findings of Fact

All three appraisers completed the income approach using the direct capitalization method. Frandson also completed a discounted cash flow (DCF) analysis; however, we decline to examine this method. A DCF is a method in which a discount rate is applied to a set of projected income streams and a reversion.

APPRAISAL INSTITUTE, THE DICTIONARY OF REAL ESTATE APPRAISAL 59 (5TH ED.). "In many markets and for many property types, DCF analysis is the technique *investors* prefer. The property application of DCF analysis identifies the market conditions investors are anticipating as of the date of value." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 539 (14TH ED.) (Emphasis added).

To complete the income approach, each of the appraisers determined the NOI for the subject property. To do this, they first examined income, including the subject

property's actual rents and market rents. Each appraiser approached the task by dividing the leasable area into categories and determining a market rent for the space. Their tables are listed in the tables below.

Frandson (Ex. 4, pp. 87-88).

Type of Space	Net Market Rent
In-Line less than 2500 SF	\$20
In-Line 2500 SF to 5000 SF	\$15
In-Line 5001 SF to 10,000 SF	\$12
In-Line Greater than 10,000 SF	\$8
Anchor Spaces	\$1.50
Outparcel 1	\$30
Outparcel 2	\$14

RERC (Ex. 5, p. 68).

Type of Space	Net Market Rent
In-Line Less than 3000 SF	\$18
In-Line 3001 to 5000 SF	\$13
In-Line 5001 to 10,000 SF	\$9
In-Line greater than 10,000 SF	\$8
Anchor Spaces	\$2.50
Outparcel 1 (Restaurant)	\$39
Outparcel 2 (Retail)	\$10

Manternach (Ex A, p. 73).

Type of Space	Base Market Rent
Tenants less than 1000 SF	\$30
Tenants 1000 SF – 3000 SF	\$25
Tenants 3000 SF - 10,000 SF	\$14
Anchor Stores	\$2.40
Outlot buildings	\$25

As evident from the above tables, the appraisers concluded somewhat similar values. Using these figures, the appraisers determined income for the subject property. They then projected expenses; which we decline to reiterate here because ultimately,

the appraisers' reach a relatively tight range when they determined NOI as shown in the table below.

Appraiser	NOI
Frandson	\$2,261,782
RERC	\$2,299,705
Manternach	\$2,376,785

Although the range appears close, we first note that Frandson included taxes in his reimbursable income. (Ex. 4, p. 95).

Marshall also testified that RERC erred in calculating expense reimbursements in its NOI conclusion because, like Frandson, it also included reimbursements for taxes. Marshall stated that after reviewing the income and expense statement, she noted the property tax reimbursement was included in the GPI. However, she explained the tax reimbursement was trended from historical data and as such, would have included vacancy – therefore, the vacancy that was applied to this line item was effectively a "double-dip," which she believes offsets the error.

The following table summarizes the tenant (expense) reimbursements for all three appraisers. (Ex. 4, p.95; Ex. 5, p.74; Ex. A, p. 78).

	Tenant/Expense	Property Tax	
Appraiser	Reimbursement	Reimbursement	Total
Frandson	\$1,715,000	\$474,186	\$2,189,186
RERC/Marshall	\$1,256,326	\$0	\$1,256,326
Manternach	\$1,300,000	\$0	\$1,300,000

Ultimately, comparing the GPI of all three appraisers, we are unable to see a discernable difference in Marshall and Manternach's conclusions of tenant/expense reimbursements, despite Marshall testifying to an error. Comparatively, Frandson's tenant reimbursement is significantly higher than Marshall and Manternach's. Moreover, he then includes a property tax reimbursement that compounds the gap in their conclusions. Likewise, we find Marshall and Manternach's total operating expenses are more similar, with Frandson's estimate again an outlier in comparison. Given the disparities, we decline to rely on Frandson's income approach.

While the Mall was critical of Manternach's NOI, we note it is consistent with the most recent historical NOI for the subject property; which is less than the last five years of the subject's operating history, with ranges from roughly \$2,455,000 to \$3,812,000 (See Ex. A, p. 65). It is also very similar to RERC's NOI. Based on the foregoing, we give equal weight to Manternach and Marshalls NOI, reconciling at \$2,340,000.

Turning to the capitalization rate, we find this is where the appraisers greatly diverged.

Appraiser	Base Cap Rate	Loaded Cap Rate
Frandson	12.5%	16.23%
RERC	13%	13.82%
Manternach	9%	12.74%

Frandson was critical of the subject's need to fill the mall space with temporary tenants; believing it is indicative of the health of the mall. Because of these factors, he asserts capitalization rates for malls like the subject rise into the teens. This appears to contradict his other testimony when he indicated the subject mall is stable to improving.

In arriving at a capitalization rate, Frandson relied on actual transactions and a mortgage equity analysis. He reconciled to an indicated capitalization rate of 12.5%. (Ex. 4, p. 97). He contends this would be at the low end of what market participants for this property type would consider. His loaded capitalization rate is 16.23%. (Ex. 4, p. 97). His conclusion of value, based on the direct capitalization income approach is rounded to \$13,930,000. (Ex. 4, p. 97).

RERC's determination of a capitalization rate relied on actual transactions, investor surveys, market participants' input, and the band of investment technique. (Ex. 5, pp. 75-77). The following table summarizes RERC's different methods of determining the capitalization rate. (Ex. 5, p.77).

Method	Conclusions
Comparable Sales	11.35%-19.00%
Band of Investment	11.29%
Investor Survey (Situs/RERC)	9%-12%
Market Participant Info	13%-15%
Reconciled Capitalization Rate	13%

Based on the aforementioned analysis, RERC concluded a capitalization rate of 13%. The loaded capitalization rate is 13.82% (Ex. 5, p. 78), which did not include the full millage rate, and Marshall admits this is in error. Despite this, she testified she believes the 13.82% capitalization rate conclusion is reliable because the vacancy was double-counted. She explained that vacancy was applied twice; once for the recoverable expenses and once for the line item vacancy. She acknowledged the double counting for the expense reimbursements is an error.

Manternach also considered various methods in arriving at a capitalization rate. He considered the two sales he analyzed in his sales comparison approach, which had rates ranging from 7.5% to 13.5%. Comparable 2, the Capital Mall sale, set the upper end of this range. Manternach noted this sale had a significantly lower NOI and deferred maintenance, which likely had an impact on that rate. He also completed a mortgage equity analysis, which reconciled to 8.4%. In addition, he looked at quarterly publications, THE INVESTMENT BULLETIN and PRICE WATER HOUSE COOPERS, LLP (PwC), which indicated rates between 5.9% and 13.5%.

As part of his capitalization analysis, he included two tables from THE INVESTMENT BULLETIN to show rates have been declining over the last two years on commercial properties. (Ex. A, p. 80). He testified the reason for this is that the commercial market has been increasing over the last few years. In addition, mortgage rates have been declining. His analysis of the PwC publication supports this observation. (Ex. A, p 81). Manternach acknowledged both the aforementioned publications indicate much lower rates in the 6% range, but he acknowledges these rates are reflective of better markets than the subject property. With this in mind, he notes his capitalization rate of 9% is nearly 50% higher than those rates and he believes they adequately consider the locational factors that affect the subject property. He loaded the capitalization rate to arrive at a rate of 12.74%.

b. AnalysisAll three appraisers developed the income approach.

Appraiser	Income Approach (Direct Capitalization)
Frandson	\$13,930,000
RERC/Marshall	\$13,300,000
Manternach	\$18,910,000

Approisor	Effective Gross	Total Operating	Net Operating	Capitalization
Appraiser	Income (EGI)	Expenses	Income (NOI)	Rate
Frandson	\$4,867,856	\$2,606,074	\$2,261,782	16.23%
RERC	\$4,649,313	\$2,349,608	\$2,299,705	13.82%
Manternach	\$4,581,986	\$2,205,201	\$2,376,785	12.74%

First, we find Frandson's NOI unreliable. Frandson's NOI included errors relating to property tax since he included property tax reimbursement in his GPI. (Ex. 4, p. 95). Correcting this error would result in a nearly a \$3,000,000 reduction in his income analysis. We find this error results in an even more unreliable indicator of value for the subject property.

Second, although Marshall testified there were errors in RERC's income and expense analysis, we cannot discern a great difference between RERC's figures and Manternach's. Based on our previous analysis, we conclude both NOI's are reasonable and in-line with historical history of the property. We give both weight and reconcile to an NOI of \$2,340,000.

All appraisers developed capitalization rates based on comparable sales and a mortgage equity analysis or band of investment. Manternach and Marshall also relied on national surveys, and Marshall also considered market participant information. The following table is a summary of their conclusions.

Appraiser	Comparable Sales	Mortgage Equity or Band of Investment	National Surveys (4th Q 2014)
Frandson	10.5% - 13.9%	11.45% - 13.45%	N/A
RERC/ Marshall	11.35% - 19.00%	11.29%	7.80% - 12.00%
Manternach	7.5% - 13.5%	8.40%	5.92% - 7.03%

Frandson and RERC relied on the sales they considered in their sales comparison analysis, with overall rates between the two appraisers ranging from 10.5% to 19.00%. The RERC capitalization rate range is the highest in the record. We question the reliability of the sales, which included foreclosures and multi-parcel transactions and as such would likely indicate a higher capitalization rate than a stable mall.

Manternach also relied on four sales in determining a capitalization rate, with a lower end of that range being 7.5%. (Ex. A, p. 56). However, he only considered two of the sales comparable to the subject for his sales comparison analysis. Those two sales indicate a range of 8.89% to 13.5%. The upper end of the comparable sales analysis for capitalization rates is based on a sale used by Frandson and Manternach, the Capital Mall in Jefferson City. Both appraisers acknowledge this sale had some deferred maintenance, which may have influenced its capitalization rate.

We note that none of the appraisers relied exclusively on the sales approach to value the property, and appraisers who used the same comparable properties came to different conclusions of condition or other pertinent factors because of differences in verification. Moreover, we recognize the difficulty in obtaining accurate information for the NOI of each property. For these reasons, we hesitate to rely exclusively on this method of determining a capitalization rate

In developing their mortgage equity analysis or band of investment, the divergent conclusions arise from different mortgage and equity ratios, as well as different mortgage constants and equity dividend rates. The following table summarizes these differences.

	Mortgage	Equity	Mortgage	Equity Dividend
Appraiser	Ratio	Ratio	Constant	Rates
Frandson	75%	25%	8.60%	20%-28%
RERC/Marshall	60%	40%	9.49%	14%
Manternach	70%	30%	7.73%	10%

Manternach explains in his analysis how he arrived at each rate that comprises the mortgage equity analysis; Frandson and Marshall do not. One of the more opposing rates between Manternach and Frandson is the equity dividend rate, which has between a 10%-18% difference between the two appraisers. Manternach asserts dividend rates for commercial investments has been around 7% to 10%, and believes the subject property would be at the higher end of this range, thus selecting 10% for his analysis. (Ex. A, p. 79). Frandson provides no explanation for his selection of a much higher dividend rate between 20%-28%. Similarly, Marshall provides no explanation for RERC's selection of a 14% equity dividend rate, but we note it is also much lower than the rates Frandson opined.

Another disparate comparison is RERC's 60/40 mortgage/equity ratio; compared to Frandson and Manternach that aligned at 75/25 and 70/30 respectively. Ultimately, in relying on this method of concluding a capitalization rate, we find Manternach's analysis to be more complete and supported.

Manternach and RERC also relied on a third analysis of capitalization rates, national surveys. Manternach considered two national surveys, THE INVESTMENT BULLETIN and PWC; RERC relied on an internal survey the SITUS RERC REAL ESTATE REPORT. Both Manternach and RERC report the surveys show that capitalization rates on commercial properties have been declining over the last several years. (Ex. A, p. 80; Ex. 5, p. 76). Manternach asserts the decline is due to an increase in the commercial market over the last few years and declining mortgage rates. Manternach testified the surveys he relied on are of better-located malls and for this reason set the low end of a reasonable capitalization rate range, causing him to select a rate higher than this analysis indicated.

Lastly, RERC relied on market participant input. It relied on information from Commercial Real Estate Services (CBRE) a real estate services firm, which services owners, investors, and occupiers. The survey results in an indicated capitalization rate between 13.00% and 15.00%. Additionally, RERC references a conversation with the previous listing broker of the subject mall who asserts B&C malls were declining starting in 2014. (Ex. 5, p. 76). We find this somewhat contradictory with the record that indicates all the appraisers agree the subject mall is stable.

Based on the foregoing, Frandson reconciled a capitalization rate of 12.5%; RERC reconciled a rate of 13%; and Manternach reconciled a rate of 9.00%, before loading for taxes. Their loaded tax rates are 16.23%; 13.82% and 12.74%, respectively. However, as already mentioned, Marshall testified that RERC did not fully load its capitalization rate; doing so would result in a higher rate.

Ultimately, we find Manternach sufficiently details his sources for and determination of the capitalization rate. Moreover, this capitalization rate is only slightly lower than the capitalization rate used in our 2013 Order for the same property. Although the Mall's sales appear to be declining, two appraisers testified the trend in capitalization rates are going down for commercial properties.

Based on the foregoing, we find the market value of the subject property, by the income approach is:

2,340,000 (NOI) x 12.74% (capitalization rate) = 18,370,000 rounded.

VII. Conclusion

Having fully considered the foregoing evidence, we conclude the subject's fair market value cannot be readily established by the sales comparison approach alone. In addition to the fact that all the appraisers gave some weight to other valuation approaches, the lack of quality sales and errors made by the appraisers gives us pause in relying on the sales comparison approach by itself. Accordingly, we give most weight (75%) to the income approach, which we determined based on our review of the record to be \$18,370,000. We give the sales comparison approach some consideration (25%), which we determined based on our review of the record to be \$18,148,000.

	Value	Weight	
	Conclusion	Assigned	Extension
Income Approach	\$18,370,000	0.75	\$13,777,500
Sale Comparison			
Approach	\$17,482,000	0.25	\$4,370,500
		Conclusion	\$18,148,000

Order

IT IS THEREFORE ORDERED that the Black Hawk County Board of Review's action is modified. The assessment as of January 1, 2015, shall be \$18,148,000.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Karen Oberman, Presiding Officer

Stewart Iverson, Board Chair

Copies to:

Deborah Tharnish by eFile

Dave Mason by eFile

Black Hawk County Auditor 316 E. 5th Street Waterloo, IA 50703